

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID ERNESTO MACKEY,

Petitioner,

v.

BRANDON PRICE, et al.,

Respondents.

No. 1:21-cv-00791-NONE-SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS; DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS; DIRECTING THE CLERK OF
COURT TO SEND PETITIONER BLANK
CIVIL RIGHTS FORM, ASSIGN DISTRICT
JUDGE, AND CLOSE CASE; AND
DECLINING TO ISSUE CERTIFICATE OF
APPEALABILITY

(Doc. No. 6)

Petitioner David Ernesto Mackey is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 20, 2021, the assigned magistrate judge issued findings and recommendations recommending that the petition be dismissed because conditions of confinement claims such as those asserted in the pending petition are not cognizable claims for federal habeas relief. (Doc. No. 6; *see* Doc. No. 1 at 4 (challenging his medication regimen and commitment status and seeking release due to risks posed by COVID-19).) Those findings and recommendations were

1 served upon all parties and contained notice that any objections thereto were to be filed within
2 twenty-one (21) days after service. To date, no objections have been filed, and the deadline to do
3 so has expired.

4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
5 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
6 magistrate judge's findings and recommendations are supported by the record and proper
7 analysis.

8 In addition, the court declines to issue a certificate of appealability. A state prisoner
9 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of
10 his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537
11 U.S. 322, 335–36 (2003); 28 U.S.C. § 2253. If a court denies a petitioner's petition, the court
12 may only issue a certificate of appealability when a petitioner makes a substantial showing of the
13 denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial showing, the
14 petitioner must establish that "reasonable jurists could debate whether (or, for that matter, agree
15 that) the petition should have been resolved in a different manner or that the issues presented
16 were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473,
17 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

18 In the present case, the court finds that petitioner has not made the required substantial
19 showing of the denial of a constitutional right to justify the issuance of a certificate of
20 appealability. Reasonable jurists would not find the court's determination that petitioner is not
21 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to
22 proceed further. Thus, the court declines to issue a certificate of appealability.

23 Accordingly,

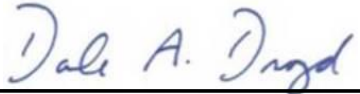
- 24 1. The findings and recommendations issued on May 20, 2021, (Doc. No. 6), are
25 adopted in full;
- 26 2. The petition for writ of habeas corpus is dismissed;
- 27 3. The clerk of court is directed to provide petitioner with a blank civil rights
28 complaint form;

1 4. The Clerk of the Court is directed to assign a district judge to this case for the
2 purpose of closing the case and then to enter judgment and close the case; and

3 5. The court declines to issue a certificate of appealability.

4 IT IS SO ORDERED.

5 Dated: **July 30, 2021**


UNITED STATES DISTRICT JUDGE